PUBLIC COMMENT PERIOD ON THE

PROPOSED PLAN TO AMEND THE 2006/2011 RECORD OF DECISION

BUTTE PRIORITY SOILS OPERABLE UNIT

Held at:

Montana Tech Auditorium 1300 W. Park Street Butte, Montana

Thursday, May 23, 2019 6:00 p.m. to 8:30 p.m.

REPORTED BY:
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155 West Granite Street
District Court, Department 2
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Thursday, May 23, 2019

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PROCEEDINGS

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THE FACILITATOR: So for the formal public comment period, just for clarity, if you want your name to be on record, state it and spell it.

Obviously, be as direct and courteous as possible. We'll try to limit public comments to about five minutes each. There's a lot of people here. I don't know how many want to give formal public comment. If we have time afterward, we can continue that.

Please try to limit your comments to what was presented tonight on the proposed plan. Please don't interrupt anyone speaking. One, you know, it helps us capture the comment that's being given to us. And then, also, please refrain from yelling, cheering, clapping, anything like that, when a comment is being submitted.

So, with that being said, I'm going to start. There's two microphones, one in this aisle, one in this aisle. You can cue up there. And then I'll, again, try to keep the comments to about five minutes. All right.

And that's the other thing, too, is we can't -- we're not going to respond. Again, we will

respond formally in response to the summary

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DAN O'NEILL: Can you hear me now?

Okay. My name is Dan O'Neill. And I might sound nervous because I'm not a very good public speaker.

But I want to focus on the technical and practicability. First thing, 30 or 40 years ago, if you would have stood in an auditorium this size and told people that you were going to restore -- or take 30 miles of streambed containing heavy metals from years of mining activity, the area would entirely be excavated, restored, reseeded and planted with native plants, I would bet that probably most people in the room would have said that was technically impractical.

attention here is because, through either ARCO or the EPA or Restore Our Creek Coalition, we have been focused so much on either restoring or recreating this creek and this area, including the Buffalo Gulch, Butte Reduction Works, the Diggings East, and cleaning it up, that they've gone so far as to seek us, through these public meetings and the meetings at the Old Central, about, "Well, what do you guys want to see here," rather than focus on what the actual source of the problems and the contaminants are.

And you've heard them answer three or four

times tonight, "Well, we don't know where the source is."

I have a map here from a BNRC meeting back in 2011. And,

even from a distance, you can probably see that top area
is entirely orange. And that orange area is mine dump

sites in Walkerville and Butte townships.

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So what I'd like to focus our attention on is an area -- and I'll call general boundaries at the North Clark Street, the South Empire Street, some areas even further, maybe Woolman to the east, Alexander Street, and to the west, generally, Excelsior Avenue. These areas contain evidence of past mining activity, exposed evidence. They have homes that are eligible for RMAP cleanup. And the area, the entire area, could be described as insufficiently reclaimed or unreclaimed. And, even with the maps that they have given outside, it doesn't even so much as touch on any of this orange area that was provided in 2011 at a BNRC meeting.

So I'm going to clarify that I believe the past work of the engineers and planners was crappy and lazy. The source of the exposed surface metal and minerals has been ignored. All areas to date that have been cleaned up have involved very minimal amounts of personal and private property and residential homes.

Most of the areas cleaned up to date have been large areas of land occupied by -- and they have not been

occupied by personal or commercial dwellings or developed real estate. They have been areas that have been owned or controlled by corporate and government agencies requiring very minimal amounts of negotiation.

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The areas where there is constant human exposure to residential metals and dust are in private homes, commercial buildings and developed real estate areas within the boundaries described. This is clearly recognized by the simple fact that the RMAP program was established. Further, there are homes where — they are homes where minors and peoples engaged in past mining-related activity carried dirt and dust and homes and buildings where wind carried and deposited minerals and metals in dust form into the home. Parts and pieces of the Butte Hill, for example, where Missoula Gulch has been reclaimed, covered and revegetated. Once again, it was an area that was largely unoccupied by residential or commercial units.

We can look at history and know that large scale negotiations with many individuals in order to achieve a desired result if possible. By that, I'm speaking of the Anaconda Company purchasing blocks and neighborhoods of homes for the expansion of open pit mining, creating the Berkley and Continental Pit, but displacing thousands of homes for the benefit of

commercial enterprise.

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Demanding a restored creek, park and playground is a practical joke and simply putting the cart before the horse. If this town isn't cleaned up and restored, there's not going do be any citizens willing to continue to live here or relocate to use the newly created areas, which would contribute to a loss of tax base that would be necessary to maintain the pie-in-the-sky park area.

I want to speak for my generation and the future of Butte and demand a study to determine the most effective solution to the origin of many of the metals that are contributing to the minerals and metals that are causing both human and aquatic environments to exceed federal and state levels. And that's the area described.

It doesn't take much of an engineering degree to suggest that the most cost-effective solution to truly clean up the Butte Hill and prevent surface erosion and exposure to metals and minerals in any form, especially to humans and aquatic species, is to negotiate with all property owners in the area described and acquire property through purchase with eminent domain, completely demolish the area described and use the same material to fill the Alice Pit.

Once the area is entirely demolished and

all curbs, gutters, sidewalks, streets, buildable lots,

parks and playgrounds, the initial stage of the project

would be covered at a cost of cleanup and remediation.

However, the long-term would provide commercial and

residential real estate with new, modern utilities and

infrastructure. This in and of itself could potentially

provide funding or reduce the loss of cleanup costs by

ARCO, EPA and responsible parties.

THE FACILITATOR: Okay. I'm going to have to stop you there. That's five minutes. Thank you.

IAN MAGRUDER: Good evening. My name's Ian Magruder. It's I-A-N, M-A-G-R-U-D-E-R. I'm a scientific advisor for CTEC. CTEC is Butte's Superfund group. We don't work for either ARCO or EPA, but we are funded by Superfund, and we're funded to review Superfund data and documents and see what it means. And I've done this for 15 years. Prior to that, my boss did it, since the '90s sometime. Prior to working on this site, I did a short stint at the Bureau of Mines.

CTEC has a summary of the proposed plan that we brought with us tonight. It's three pages. We'd like you to have a look at it. It's really plain language. We don't use the word "ROD." We don't have any figures in it. If you're -- if you're willing, I'd suggest taking a look at it.

The rest of my comment is going to be my personal comment. CTEC does not have an official opinion on the proposed plan, but I will develop one before June 11.

My personal opinion is I stood here in this room 15 years ago and railed against the EPA for their proposed plan at the time. And I did that because I was innately familiar with the data that the original proposed plan was based on. And I thought it was a joke. Today, I feel differently. I'm not here to rail against this proposed plan.

I've looked at every major document that's come out of the Superfund process in the last 15 years. Some of them I've felt worse about, but I noticed a change in the EPA's language and position in recent years. The first time I saw it I was really surprised. I reread the page a few times because I was, like, "Wow, they're actually, they're actually on the same page as we are." I'm not sure if they had come to our conclusion or we had come to a joint conclusion. But it marked a significant change in EPA's stance towards Butte as far as I was concerned.

I know a lot of people are focused on the creek, Upper Silver Bow Creek, and whether it will be restored to a flowing meandering channel. And I am in no

way here to disparage that dream. I think it's a good idea. But when I look at the proposed plan, although I do realize that is absent, I see a lot of good things in it. In fact, I see just about everything that we were fighting for 15 years ago in this proposed plan.

In addition to that, I see solutions for problems that have been identified in the last 15 years. A lot of hard work has gone into studying the Superfund in Butte since the original proposed plan. At this stage I'm surprised we even had a proposed plan and ROD when we did, because we really didn't know half the story. Both the State and EPA and ARCO have spent a lot of time and money studying this site since then, and that information was critical to identifying further problems. So I guess that's -- when I look at the proposed plan, I see a plan that I think Butte should be happy with.

Thank you.

JOE GRIFFIN: My name is Joe Griffin, and that's J-O-E, G-R-I-F-F-I-N. I've been involved in Butte and Anaconda Superfund for about 30 years now. I'm a hydrogeologist. The last 11 -- I'm retired now. I retired in 2015. But the last 11 years of my career I was working on this site.

And, as Ian just indicated, I've seen a large shift in where it's gone. So, with 30 years

experience, I've come to understand the Superfund process and fully appreciate it. It can be messy sometimes, and it's certainly very, very complex. But it's a good process. It's based on both law and science. And, for instance, water quality standards. That's set in as a law that EPA will follow. But, really, the law will follow the science. So when the science says you've got to change the law, that's what happens.

And so we're aware in this proposed plan there's a waiver of -- there's a technical impracticability waiver, the total recoverable standard going to the federal standard. There is actually good reason for that. It's well-founded. And the way it's structured right now is simply copper and zinc during storms. Then there is a requirement for a lot of additional work. And I'd like to mention some of that additional work.

So, for the longest time, when I worked for DEQ, storm water was my biggest issue. I was -- it is far exceeding standards and it was the biggest problem for Silver Bow Creek. One thing we did learn about storm water is that the storm water ponds on Missoula Gulch were very effective. As a matter of fact, those ponds will remove up to 95 percent of the total recoverable copper just by holding the water back for a while. It

gets released once it's pushed out by maybe the next series of storms. That's a very effective system. And it's passive treatment. It's kind of got some elegance to it really.

But I would like to, also, talk about groundwater because I'm a hydrogeologist, and I was part of the "Parrot Wars" you might say. And I was on the State side of the Parrot Wars. But the way that EPA addressed the Parrot flume in the first place is they said, "Even if you remove everything you can, it's going to take a long time for this aquifer to clean up." And I can't disagree with that as a hydrogeologist.

But they went on to say -- first of all, they said, "We're going to waive that groundwater in the eluvial aquifer." That stand -- those standards are waived, too. But they said, "If groundwater is affecting Silver Bow Creek we'll do something about it." And we're at that point now. And not only are we at that point, we understand a couple of locations where groundwater is specifically affecting the stream. And those are now being addressed under this proposed plan.

The last thing I'd like to talk about was a total surprise to me, and that was the expanded program for yard and home cleanup. And expanding it, that's the second time it will be expanded. The first time was in

2011, when the EPA issued a unilateral administrative 1 2 order. And they said, "We're going to take care of attics across a broad expanse of Butte." And this time 3 they're saying, "We'll do the whole residential metals 4 5 abatement program." Most of the county, almost the 6 entire county. That's -- that's a big expansion. 7 So I guess that's -- I'm pretty much a 8 proponent and very pleased with this proposed plan. 9 Thank you. 10 JOHN RAY: My name is John Ray, J-O-H-N, 11 R-A-Y. And I, too, am well pleased with the proposed plan with this caveat. No legislative enactment, no law, 12 13 no program conducted by the government can go beyond what is mandated by law. There are things that people might 14 15 like to see happen, that people think ought to happen, but it has to confirm -- conform to the parameters of the 16 17 law. 18 And, given that, I think that the proposed 19 plan, actually through mutual consent, goes far beyond 20 what EPA could order the principal, the potentially 21 responsible parties, to do. And for that, ARCO, for 22 example, has gone the extra mile in a number of the 23 provisions in this proposed plan. But my point is that

you have to consider what can be ordered and what can't

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be ordered by EPA.

With that said, I have these specific comments. One, in terms of the TI waiver, I think it needs to be addressed in the responsiveness summary what will happen if you can't meet these federal standards. That needs to be specified, how far down the line do we go.

I want to say a little bit about the health study, and the basis for my comments on the health study is not just what's in the proposed plan, but also what is in the work plan for the RMAP program that calls upon going beyond simply looking at lead levels in children and doing biomonitoring studies, but does call for looking at the health effects of all the contaminants of concern in the Butte area.

To that end, I would ask that, one, we need to move beyond looking at just lead levels in children and look at other contaminants of concern. Arsenic, for example, needs to be thoroughly analyzed. The effects of the contaminants of concern on the population other than children needs to be considered.

Secondly, there is a call to review data to see what new developments they are and epidemiology in terms of the toxic effects of the contaminants of concern. But what is not spelled out is, "Okay, we'll do these reviews," but how will these reviews actually

impact the cleanup, what efficacy will these reviews 1 They are not just, hopefully, academic exercises 3 but have some efficacy that needs to be spelled out.

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Next, look at other diseases other than The focus is on cancer, which is certainly cancer. important, but the contaminants of concern in Butte can create other health effects other than cancer.

Another question is that the environmental justice differential effects need to be considered. that, I mean that a level of exposure that may not be harmful to the non-poor may be very harmful to the poor because of compromised immune system, lack of access to health care, living in substandard housing. And the differential effects on low income citizens needs to be considered. Butte has a large number of low income citizens living within the BPSOU. That needs to be considered. Also, the cumulative and synergistic effects of exposure to contaminants of concern needs to be considered.

And, finally, we probably need to take another look at the protectiveness of the action levels, are they really still protective of human health and the environment.

I want to say a couple of things about the RMAP expansion. I, too, support that. The RMAP is a

nationally recognized lead abatement program that goes 1 2 far beyond what Superfund can order. Looking at lead 3 paint, for example, that paint is not a toxic waste from mining. In the expansion of this RMAP program, I would 4 5 call for specific consideration of, again, how are we going to involve the environmental justice community and 7 how are we going to publicize this program for all 8 citizens. 9 And, anyway, those are the specific 10 concerns I'd like addressed. But, generally, I'm 11 supportive of the program because I think it goes far beyond what could be ordered under the law. 12 13 BARBARA MILLER: My name is Barbara Miller, 14 B-A-R-B-A-R-A, Miller, M-I-L-E-R. I've lived in Butte since 1977, and I've 15 had a front row seat for the entire cleanup. So I have 16 17 to say every single action, every single staff, 18 somewhere, somehow, I got to know them. I don't know 19 you. And so I'm here to say it has been a really 20 remarkable journey from where it started to where it is 21 now. 22 I've been 26 years with Habitat For 23 Humanity here in Butte, and we've built many houses.

I've personally been in 300 of the substandard, I would

call them dangerous, homes that have extremely bad

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toxicity problems. In the whole time I've been here,

I've been worried about the conditions I see in the

children that we serve.

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And so our comment -- and Habitat for
Humanity will be putting in formal comment in writing
before the deadline. We are concerned that the action
level for residential areas will do several really
harmful things to Butte. The first one is this process
has been going on so long that confidence in the cleanup
has been deeply shaken over time.

And so you're up against -- you have this incredible accomplishment. So many people here have accomplished so much for this community through this cleanup. It's just been almost miraculous. But all of that amazing work is going to go to waste if there's no trust in your final number, there's no trust in your action level as far as lead level for children. If you leave a lead level of 1,200 parts per million, which is three times the HUD maximum for housing that has children in it, you are dooming the town to have no confidence for newcomers coming, and this kind of thing, because why can't you even meet basic HUD standards.

And so that -- that particular thing within the RMAP expansion is very important for us to see that you would adopt the same action level for Anaconda, which

is 400 parts per million lead. And that's a great place to start with your cleanup, because you will build confidence and you will build health. But if you leave action levels at 1,200 parts per million, what is bound to them -- I have done much sampling in my career. We've had to. A building that we own Uptown had 17,000 parts per million lead and arsenic because of a fan pumping smelter dust into the fourth floor. That was one of our first EPA cleanups. Because EPA came and cleaned up the hallways in that floor, but not the residences.

You know, the RMAP program doesn't have enough funding, it isn't large enough and it isn't comprehensive enough. It's a miracle for what it is, but it doesn't go to where you have to be to get confidence.

This town deserves to grow. It deserves to have what all the towns around it have, as far as the confidence and health of the people. And so it's very important to us that you strongly consider the open working document of the RMAP program, to drop it to 400 parts per million for both Butte and Anaconda, otherwise it's going to be hard to continue to build new housing here.

Thank you.

FRITZ DAILY: I'm going to offer some comments, but I'd like to use the lectern over here, as I

1 did last week. It helps me with some notes that I have.

2 | So I would appreciate if you would do that, put the

3 | microphone in over there and let me use that.

4 THE FACILITATOR: Sure. I'll put the

5 | microphone in there for you.

6 FRITZ DAILY: Thank you.

7 First of all, my name is Fritz Daily,

8 F-R-I-T-Z, D-A-I-L-Y. I'm a concerned citizen here

9 | tonight, and I'm a member of the Silver Bow Creek

10 | Headwaters Coalition.

I'd just like to say up front that I'm kind

12 of offended that the EPA would come in here on a formal

13 | comment period and allow folks, like myself, only a

14 | five-minute opportunity to say what I need to say and to

15 | say what needs to be said for this community. I'm

16 offended by that, and I'm offended for all of the other

17 | people who are speaking here tonight. That is just wrong

18 | and should not happen.

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19 This is the only opportunity that folks

20 | like me have the opportunity to say what I need to say

and what you need to hear, whether you like it or not,

22 about what needs to be done for this community. I'm a

23 | proud member of this community. I've been here a long

24 time. I love this community. It's where I live, and I

25 | want to see this community grow and prosper. And what

you folks have done and what you folks are doing here tonight is wrong. I want you to know that.

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I offered testimony back on April 23, the last public hearing, and I've also submitted written testimony to my strong opposition to the Proposed Record of Decision Amendment by the EPA, the State of Montana, the Butte-Silver Bow local government, and British Petroleum/ARCO. I'm going to reiterate a few things I said at the last meeting because I realized that there are people here tonight that weren't here when I had my opportunity last time.

For the record, just let me say that this proposed decision on the amendment on Butte Priority Soils, it's a bad decision. The agreement in principle was a bad decision. And the 2006 Record of Amendment, the Record of Decision, was also a bad decision.

For the record, Silver Bow Creek from Texas Avenue to Montana Street is a creek and a watercourse and not a sewer. It's not a storm drain. It's not a water feature. It's a creek, as determined by Judge Brad Newman in the Silver Bow Creek Headwaters Coalition lawsuit against the State of Montana, which I remind you was a successful venture for myself, Sister Mary Jo McDonald and Ron Davis.

The stakeholders in this meeting are not

you guys, they're not the EPA, they're not ARCO BP. You guys aren't the stakeholders here. The stakeholders are us. The stakeholders are the people like me that are here tonight. We're the stakeholders. We live here. This is our town. Our kids and our future generations are the stakeholders. They're the true stakeholders.

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There is absolutely no question under Superfund law and state law and the Montana Constitution that the Atlantic Richfield/British Petroleum Company is responsible for the cleanup of Silver Bow Creek and Butte Priority Soils. They made the decision to close the mines. They made the decision to close the Pit. They made the decision to shut off the underground pumps that has left the Berkeley Pit flooding and the Butte mine flooding. They made that decision.

And I believe that the cleanup and restoration of Silver Bow Creek, the Butte Hill and the Montana Pole Site and the cleanup and restoration of the Berkeley Pit are the most important issues facing this community and they need to be addressed properly and responsibly.

As I stated at the last meeting and wrote in my comments to the EPA, I believe it is totally wrong, it's wrong, that ARCO and British Petroleum Company has been taken off the hook for the cleanup of Silver Bow

Creek from Casey Street to Texas Avenue. I believe it's totally wrong that we, as a community, and the Council of Commissioner members who are here tonight are being told, "If you don't accept this inferior cleanup we're going to give you a worse one." How about that? How crazy is that?

And lowering the water discharge standard to allow for discharge of contaminated storm water, and, by the way, Berkeley Pit water that will be discharged in Silver Bow Creek, is even crazier. I mean, how could we lower these standards for our community and let us accept it? Not restoring our huge portion of Silver Bow Creek to a quality creek, where children can play and fish, is unconscionable, and it's wrong, and it should never be accepted.

And I'll -- and I'll finish. But I just want you to know it's wrong. The only chance that people like me have an opportunity to say something is this, it gets recorded. Otherwise, you guys don't listen to us. At least this way you have to listen to us.

And, yes, we can have a creek flowing through this town. No matter what these people say, yes, we can. And we can have a creek that's attached to the groundwater, as well. As Judge Newman wrote in his -- in our successful lawsuit, Silver Bow Creek is a creek.

1 | That's what it is.

Well, just so you know, what you're doing

3 | is wrong.

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THE FACILITATOR: It's been five minutes.

You can submit written comments.

FRITZ DAILY: I've already done that. And if Doug Benevento was here he wouldn't allow that to happen. And what you're doing is wrong. And I'm sick and tired of you guys doing this in my community. What's wrong with you people?

MARY KAY CRAIG: Hi. I'm Mary Kay Craig. I live at 518 West Granite Street in Butte. I'm a Butte native. And when I get this right side up I won't take up too much of your time.

I'm a founding member of the Citizens for Labor, that means jobs, and Environmental Justice, referring to low income people. And I'm also a member of the Restore Our Creek Coalition. As both of those organizations will be submitting comments in writing, I'm going to confine my remarks to my own ideas here.

Over the past 28 years I've also been involved with the Clark Fork Coalition and with Butte Citizens for Labor and Environmental Justice. And I'm still coordinator of Butte's Peace Group, TAPS, Taking Action For Peaceful Solutions. That is relevant to the

justice seeking, justice seeking that -- I'm going to put
this down a little bit. Last time I was speaking here,
people didn't hear me in the back.

At any rate, that is relevant to the justice seeking I do regarding Superfund and low income people who live in substandard housing on the hill in Butte, youngsters who may be playing daily on contaminants of concern, as well as the people of Butte who may be breathing lead, arsenic, cadmium or mercury that can blow off of barren mine soils east of our homes, on the edge of, quote, historic mining landscapes, closed quote, within the undefined West Side Soils or near unremediated or insufficiently remediated areas of the Butte Priority Soils Operable Unit. Specifically, here are just some of the human health concerns that I have with the ROD amendment that's proposed.

First, the word "occasionally." I wrote to EPA asking about the word "occasionally" some years back, when I had a Godchild who was playing on the Northside Tailings continually. The reply I got said that occasional use of this -- of that area for play would not be harmful to the child. That child is dead now.

So sometimes I have to wonder about mental health of people living in Butte. I've heard a speaker talk about that. And I'm wondering if EPA has ever

looked into what happens when people live within a contaminated area, how does it affect them, do they take their own life. And that's about as bad as it could get, I guess.

The word "occasionally" is often used in legal documents from EPA, usually with regard to health and risk -- health risk evaluations. Nowhere have I found a definition of the word "occasionally" in EPA documents. For the sake of transparency, will you please define the word. Early on Page 9 of my 20-year-old toxicology class textbook, it deals with the frequency/response and cumulative dose curves. Please provide scientific terminology to characterize the hypothetical six-year-old used in your risk data sheet who was considered safe when he or she had a, quote, short-term, one-day pulse of exposure to sediment and storm water in your proposed plan. And define "occasionally" in the context of children playing among mine wastes more often than one-day dose.

In the latest health risk data sheet from EPA, which I just referred to above, regarding lead, a risk of lead poisoning, there is no mention of the vulnerable or immune-compromised humans. My old toxicology tome considered this important, dealing on Page 18 with the genetic makeup of individuals who may

1 | come into harm when --

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We're doing five minutes? I didn't know that. That's what you get when we're showing up a little late. What have I got left?

THE FACILITATOR: About 30 seconds.

MARY KAY CRAIG: Well, you can have them. I don't want them.

STEVE McGRATH: My name is Steve McGrath, S-T-E-V-E, M-c-G-R-A-T-H. And I'm speaking tonight on behalf of the Greeley Neighborhood Community Development Corporation, Inc.

And it's our concern that the ROD is overlooking a potential human health concern; namely, the chronic ingestion of metals and airborne particulates. The same particulate that can be suspended in the streams can also be entrained in the air under the right atmospheric conditions. And people can inhale that particulate and ingest the metals by swallowing their phlegm. Recent work in a published peer-reviewed scientific journal found that the residents in Butte had elevated metal loading indicative of chronic exposure.

While the BPSOU risk assessment investigations included extensive air quality monitoring and concentrated on arsenic, a recent study suggests that a more comprehensive list of elements, including arsenic,

aluminum, copper, cadmium, manganese, molybdenum and uranium should be considered to quantify human health risks fully. This is because a chronic metal burden can interact with genetic predispositions to cause a number of conditions, such as neurodegenerative disorders, as well as cancer. And it has been well-known, according to the CBC, that Butte has had elevated cancer and neurodegenerative disease rates prior to the beginning of the BPSOU cleanup. But it's in dispute that the disease rate is declining in proportion to the remedy according to another recently published study.

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So what we would ask for is that during -there's supposed to be, like, a nine to 12-year shakedown
period for the proposed remedy -- that additional air
quality monitoring also be conducted that looks at both
the total suspended particulate and PM-10 and that
speciates the metal concentration for that expanded list
of anolytes just to quantify that, you know, the remedy
is working and it's leaving Butte with a diminished
long-term health risk.

Thank you.

MARY LOU FITZPATRICK: Hi. My name is Mary Lou Fitzpatrick, M-A-R-Y, L-O-U, F-I-T-Z-P-A-T-R-I-C-K. I am a third generation Butte native. There are two generations behind me. My great grandparents came here

in the 1870s and 1880s. They were involved in mining. 1 2 don't have any kids, but I want my nephews, my nieces, my 3 great nephews, my great nieces, to be able to live in a 4 healthy, clean environment. We've been fighting this 5 fight for a very long time. See the lady on the hill. That took a lot of courage, and it took a lot of strength 6 7 and it took a lot of belief. So the same with this. 8 want our city cleaned up. We want business to come back. 9 We want a healthy environmental for our kids. 10 Thank you. 11 BRAD NEWMAN: My name is Brad Newman. B-R-A-D, N-E-W-M-A-N. I'm a resident of the historic 12 13 Butte Hill and a citizen of Silver Bow County. In my former professional life, I was a district judge elected 14 15 by the people of Butte to apply the laws of Montana in various litigation matters. 16

I came here today to receive information. I appreciate the written materials that you folks have provided to us. I appreciate the presentation that we heard today. I hadn't prepared any comments, so I apologize if my comments here now are a little bit disjointed. But the information that I received has at least raised one or two questions in my mind.

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I was the presiding judge in the case brought by the Restore Our Creek Coalition. The

talking about in this case include the parties to that litigation, State of Montana, Montana DEQ. In that case, after hearing significant legal argument, after receiving significant evidence, the Court ruled that the area of Silver Bow Creek that had been referred to for years and years by various governmental agencies as the "Metro Storm Drain" was not a storm drain. It was Silver Bow Creek, both in name and in legal status. Silver Bow Creek is a natural watercourse. The fact that man diverted water from Silver Bow Creek for years did not change the legal status of Silver Bow Creek.

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Professor Ray is absolutely right, EPA cannot command action beyond what is allowed and required by law. But, by the same token, we cannot ignore what is The State of Montana was a party to the case before me. The State of Montana vigorously defended the case brought by the Creek Coalition. The State of Montana spent considerable money and considerable effort in presenting their side of the case. The State of Montana, Montana DEQ, is bound by the decision in that case. They were parties to that case. They had a right They did not appeal. That decision is legal of appeal. precedent. That decision binds the State of Montana, it binds Montana DEQ, to recognize Silver Bow Creek as a

natural watercourse.

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And so when I hear about a proposal that talks about recycling water, that doesn't sound like a free-flowing natural watercourse. I think that that consent decree with that proposal is inconsistent with the law that establishes that Silver Bow Creek is a natural watercourse. I'm going to confine my comments to that particular issue.

I think there's much good in the proposal that we're, once again, learning about here today. But my questions are specifically directed to the parties that are bound by the decision to recognize Silver Bow Creek as a natural watercourse, the State of Montana, Montana DEQ, Butte Silver Bow County, our government. Can they enter into a consent decree? Can they agree to a solution that ignores the law of Montana?

Silver Bow Creek is a natural watercourse. The decision that I made that was not appealed by the State, that the State acquiesced in, is based on valid legal precedent, statutes, case law, the Mitchell Slough case, for example. Despite man-made alterations, when we're talking about a natural watercourse, it's not just in name only. Silver Bow Creek has legal status that must be observed by the interested parties to this consent decree.

BOB BROCK: Hello. My name's Bob Brock, B-O-B, same both directions, B-R-O-C-K. And I'm just a citizen of Butte here. And I didn't bring any prepared remarks because I wanted an answer to the question I had earlier on the TI modeling.

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And, just looking at this, kind of taking back on Joe's comments earlier, it seems to me like the preferred and the strategic sort of push in this map that's up on the screen right now is to remove tailings and replace them, which, you know, gets at the groundwater issue, and replace them with catch basins, we have retention, detention, settling, whatever you want to call them, on the surface. And that makes sense to me from a logical point of view because you're getting a two-fer. One, you're limiting a source of groundwater contamination as flow into the creek; and, two, you have available real estate up on top where those tailings used to be that allow you to develop, you know, catch basins.

What I'm struggling with is why the Parrot Tailings is not included and was not included in the TI modeling on -- for this waiver. And it's absolutely true. We can't go beyond what's the law. But we're here tonight because all the parties are asking us to change the law by changing the standard that, you know, is required for discharge in the creek. And, before we do

that, it was told to us that everything but the kitchen sink was thrown into these models. Well, if the main focus of your remedy is removing tailings and replacing them with storm water features on the surface, why was the biggest, if you go down to that 1954 map, the biggest of all of those tailings was the Parrot Tailings?

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And so I would strongly encourage all the parties realizing that the removal of those tailings has likely occurred after this proposed plan was first put --first put together. I'd strongly encourage all the parties to go back and do some modeling that includes things like storm water catch basins where the Parrot Tailings are now. Because when you're talking about a creek, a creek needs headwaters. And I've heard it said to the good folks that have been fighting for Restore our Creek that there's no water source.

Well, there is a water source, and it's the exact same water source that fuels pretty much any natural creek. If you start hiking at the bottom of a creek in any drainage around Butte, Montana, you will end up at a mountain lake. And that mountain lake started one of two ways, and a lot of times is a combination of two things, groundwater and storm water. And when you're getting up into where the Parrot Tailings are now, you're getting up into an area that could well be the

headwaters.

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If it was considered, which it has not been to this point, if it was considered as part of the remedy, that could be the headwaters of a meandering creek through town. Because, really, alls it is is storm water that creates a lot of the creeks. It's just millennia's worth of snow melt. And, you know, you don't have to have a storm water basin there that's full immediately. But, in time, with that considered as part of the solution, that might be the headwaters of the creek that people are looking at.

So I couldn't agree more with Judge Newman that that is a creek. And when that major area has not even been considered in this, I think we're leaving a lot on the table. Certainly, if I was modeling possible remedies, that would be one that I would include in my model. And I strongly encourage all the parties to not rush into a consent decree until we're going to change the standards, change the law that we currently have to enforce, until every last option has been exhausted. And that one has not.

GEORGE WARING: Good evening. I'm George Waring. I share an address with Mary Kay Craig. I want to continue on with her statement. She and I met over 20 years ago on this very issue, and at that time it was

shutting off the pumps in the Berkeley Pit and letting the water go up. I remember that was my, as a state and local government teacher, that was my introduction to how local government really worked.

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I just want to pick up where Mary Kay left off. She's asking you to define how often the children, such as her Godchildren, would have to play in and around the storm water and the soils that we've caught in the ebb and flow of the ponds.

Your health risk data sheet discusses risks to pets and wildlife. In the cases of nesting birds, you state that long-term monitoring will be done and EPA will evaluate whether they are being harmed and take steps to mitigate them if needed. I ask you that you also provide long-term monitoring of humans that come into contact with the proposed storm water ponds. Why not give humans that benefit, as well? Why not, given that EPA has established the highest allowable amount of lead in the nation for the Butte standard.

Synergy of contaminants has barely been studied by EPA's sister agency, ATSDR, Agency for Toxic Substances and Disease Registry. Mary Kay has brought that topic forward in public comments for the last 25 years. And, these days, public meetings on health have Atlantic Richfield and other contractors saying synergy

of Butte contaminants are being studied. Really? About two of them have been. Casserett and Doull's Toxicology tome, 8th Edition, has more information on how metals interact with one another than does any Butte area Superfund document. She would be happy to purchase a copy of that book for EPA epidemiologists.

In a recent copy of the Montana Standard,
Atlantic Richfield placed a full color two-page ad
entitled: "To the Butte Community." In it they state,
quote, under the proposed plan RMAP would become
available to thousands of additional residents at their
request. Does that mean that renters in substandard
housing in Butte can simply ask and have their attics and
yards evaluated? That is something that has been argued
for in the 18-monthlong Lead Levels Advisory Committee
meetings in the mid 1990s. Please, will EPA use their
often-mentioned ability to force landlords to have the
places they live in evaluated.

Butte's health study is, again, not thorough. Mary Kay has asked for more than lead to be included. That is mercury, cadmium, arsenic, and their synergism with each other and with others, crystalline silica. It was named such in about 1996 by the International Agency of Research on Cancer, but EPA has chosen, for whatever reasoning, not to include it in risk

studies for Butte.

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And so my wife, who has had both ovarian cancer, 1996, bladder cancer in 2017, perhaps the most vulnerable people of Butte because she was born and raised in Butte. Her mother died of bladder cancer. She believes Butte deserves a robust health study and ongoing monitoring. EPA can make that happen. Butte-Silver Bow can desist in its denigration of the independent health studies done by credible Ph.Ds over the years.

And so thanks for your attention.

THE FACILITATOR: Someone's behind you.

MAKE PAFFHAUSEN: My name's Mike Paffhausen, 34 Berkeley Trail in Butte. I'm here as a private citizen, a business owner, a husband and father to my kids, a former consultant that worked for DEQ and EPA in the past. And I'm a licensed professional civil engineer and water resource and environmental engineer. I'm no longer in the field of consulting. I have no contractual ties to anybody in the room but figured I would like to offer my expertise and knowledge on the subject over the six years that I worked on the site as my comments.

A couple things I'd like to add outside my prepared comments is just some clarifying points from prior comments. Everyone's comment is valid and we appreciate the opportunity to be heard because we know

that there's other places in the world where this doesn't happen, so we appreciate that.

There is eight operable units, and we're discussing one of the eight. The other operable units will go through the same Superfund process that this one will, so there is concerns and things outside of the Butte Priority Soils Operable Unit that will go through the exact process we're in now. And I think people should rest and take some comfort knowing that we have seven more tries at this to get it right outside of the Butte Priority Soils Unit, as well.

Let's see. Also, regarding public comment period, I think the written comments become part of the permanent record, right, as well; is that correct? So provide written comments if there isn't time because they are valid and everyone wants to have them as part of the record.

And then the other -- the last comment that I would like to add is just I understand the legal definition of the creek. I agree that where the creek lies historically there is a legal premises to still continue to call it a creek. There isn't current headwaters. And that -- that is a problem. There is no source of water to put into the creek. And the biggest problem primarily is water rights issues. The sources

that are available are spoken for until mining operations 1 completely subside in Butte.

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I'd like to thank the Clark Fork Coalition, Restore Our Creek, others. I feel like you guys have been heard. I see a lot of concessions on the screen. And I really believe that without your guys's persistence and pushing we wouldn't see a design that we see today. I think we would see a lot more square storm water ponds, like what they're legally required to put in.

I believe that the plan is a concession of what the Clark Fork Coalition and ROCC have requested while obtaining the remedial design objectives and obtaining the most effective design to prevent storm water trigger pollutants from reaching the stream. we heard that from other commentators earlier. the most effective remedy storm water ponds.

The space required to create these ponds and the look-feel-touch components that we're asking for can only be obtained by substantial excavation of the proposed order on the screen, the removal particularly of the Northside Tailings and Diggings East. I believe it should be made very clear that their removal is not legally required by the ROD, or the Record of Decision. EPA has no grounds to force this as being volunteered to us to accommodate our requests. I am grateful for that.

And as there is no legal pathway for anyone to be forcing ARCO to do this, they're doing this in good faith as a concession in this negotiation with our community.

Regarding subject matter experts, I feel, as one, that I would consider myself a part of that group with my experience, background, training and education, that they are substantially in alignment, that this plan achieves the remedial objectives of the site, that the revisions to the ROD are totally appropriate, fair and keep our fish and our folks safe under the federal water quality standard, which is a scientifically derived standard, as well.

I also encourage the public to listen to those scientists and engineers. A lot of us are quiet in the room. A lot of us have ties to these organizations and we can't get up here and comment. I can. I don't have any ties. But there is people in this room that will talk. I understand. I will encourage the public to listen to those folks. They're subject matter experts, and they've devoted their lives and career to the successful cleanup of this community.

I would ask the public not to fall victim to what I consider to be factually uncooperative claims that we're getting screwed as a community. Streams use to run red and orange here. Copper concentrations are

two orders of magnitude above where they are today.

Parts per billion is what we're discussing now, and

getting the -- to put that to layman's terms, that is two

teaspoons and 2.1 million gallons of water that we're

Thank you.

discussing, just to make it clear.

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SISTER MARY JO McDONALD: Sister Mary Jo McDonald. What I brought here today -- I am coming as a member of the Silver Bow Creek Coalition. And we are the ones who worked hard to get the name of Silver Bow Creek restored.

 $\,$ And I have brought with me three documents, and they date back to 2003. And it was when --

And this was not during your time, Loren. You're off the hook.

This 2003, when ARCO decided to take the metro storm drain and to redo it, and they changed the shape of the channel. They made a trapezoid out of it, and then they incised the bottom of that channel so that it would -- they call it a free flowing brooks -- what is that? Help me Norman. Storm brook -- no. Anyway, it's not important.

But they did that. And they did it so that the affluent from the Horseshoe Bend Treatment Plant could be released into that and flow down because the

assumption was it was good water, it will be fine, but what they discovered is it wasn't fine, it became contaminated. But they did redo that channel that today is Silver Bow Creek. So if that channel can be redone in 2003, I hunch with all the latest in engineering, etc., etc., that in 2019 it can be reconsidered as a possibility and that we could have a restored creek.

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The one thing that the plans promised, and there was one document that was a paper presented in Billings touting the wonderfulness of the plan and how it was carried out and the results, has about aesthetics, the wonderful aesthetics that would be created. And there would be grasses planted, and trees would be planted, and it would look wonderful. And I ask every one of you, tomorrow, to drive by Texas Avenue and look to the right and look to the left and follow it on down, and continue looking to the right and to the left. And if you think that's aesthetically pleasing, excuse me. It is not.

They were supposed to have planted several different varieties of wonderful trees. And there's a list in here. And I will have a set of these out there for anybody who's interested. Beautiful trees. There are none. There are a few pine trees, evergreens, or whatever they are, that are struggling to survive. We

are in a city where people care about their yards and their homes, and they keep them up throughout the whole summer, and it's a wonderful city to drive around and just look at those yards. You don't want to drive around what they call the metro storm drain area because there are no aesthetics. And it's something that needs to be addressed.

And do I have doubts? Well, I hope that's always going to be green and it's always going to have trees growing and it's going to be wonderfully aesthetical for people to gather in and to enjoy. I hope that's going to be true. But if there are not plans to carry through on the promises that are made, it won't happen. It won't happen.

And so we, the citizens of this community, we have rights. And one of those rights is to live in an environment that's safe, that's pleasant, that's aesthetically wonderful, and that is taken care of, and we have no health concerns from the environment. We have that right. And we need to fight for that right if necessary.

And, yes, looks good on paper. But so did the other plan, 2003. And I can assure you those trees and grasses, they're not there. I've gone out and taken pictures of the area and the riprap.

Thank you, Patricia. I understand that's 1 2 going; is that correct? Thank you. 3 So they're working with us on that whole area. Now, what we need to do is truly find a way to 4 5 bring the water back. And we say, "Is there water? 6 there is." The polishing plant is going to do what to 7 the pit water? We hope it's going to clean it. And we 8 hope that water is going to be put down -- 30 seconds. 9 We hope that water will be put into the 10 stream so that it will flow down on through. Because 11 what they did to the metro storm drain was from the north side of the Continental Drive and was to go all the way 12 13 down to the Blacktail confluence. That's what we need in 14 the restoration and the remediation. 15 BILL BOONE: My name is Bill Boone, B-I-L-L, 16 B-0-0-N-E. 17 THE FACILITATOR: Can you speak up into the 18 microphone? 19 THE COURT REPORTER: Or come over here 20 maybe. If you come over here I can probably hear you 21 better. 22 BILL BOONE: My name is Bill Boone, B-I-L-L, 23 I would like to make a comment on where is B-0-0-N-E. 2.4 the copper coming from on the -- when the rain collects 25 it and goes into for the elevated that you get on those,

on how to fix it.

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Having over 40 years of mining here, from Whitehall into Utah and Butte, worked underground and was shut down. Was on vacation on working in the Kelly and got a call from the mother-in-law and said, "They just shut the pumps down." My boss, the head engineer, told me, "Don't go on vacation." Wouldn't say why, but they -- no salvage or nothing, was their intent on shutting and not maintaining that underground.

So which brings it around to is, I don't know, for 30 years this area has been looked at by engineers, very good engineers. So where is that copper coming from on that, between the collection of -- you meet the standards of the State, but when it rains hard and gets in there, then it gets spiked.

On one of the things you have about is facts about EPA's proposed waivers of certain State water quality standards. There's how a State standard can be waived. There's a statement there that while great strides have been and will continue to be made in reducing sediment loads to the creek, the reductions still do not allow the standards to be met on analysis of filtered samples. Similar wastes had occurred for the Clark Fork and Milltown.

The question is, they have the words

"sediment load." Is there a sediment load waiver for the Clark Fork and Milltown but Butte is a copper waiver, or are they talking about the same thing? I have a question on that one, their waivers. So Butte's not unique on asking for a waiver, supposedly, to this one. It says the Clark Fork and Milltown have had waivers. But is it apples and oranges? And that was if somebody could say where does that copper come from, how do you fix the problem then?

Having worked at the Sunlight at a cyanide mine, laid out all the buildings, all the dams, the impoundment pond, the slurry dikes, and all that, they controlled the cyanide. I don't think it's rocket science. Expensive. It may be expensive to get to that level in Butte. But I'd like to see if it was possible, the high and low extremes, what would it take to get to that point to collect that?

And that's my comment. Thank you.

EVAN BARRETT: My name's Evan Barrett. I'm a Butte citizen, retired. I had some complimentary things to say, but since I only have five minutes I'm not going to waste them on compliments.

I spent 13 years as an employee of the State of Montana. I spent seven years as a federal employee of the U.S. Senate. And the thing that was

always drilled into me was that the folks sitting out here are the bosses and we, the employees, are their employees. So if this is an EPA meeting, so you are the employees.

Now, I'd like to make a practical suggestion to you. If we can stay up later than 8:30, so can you. Now, I understand saying five minutes makes sense so that everybody gets their first shot. But as soon as everybody in here has had their first shot at this microphone, you need to stay and open the mike up so that those who wish to supplement their testimony can. And don't tell them to go home and write it. She's taking it down so they don't have to write it.

So I'm using up some of my time to give you a practical solution. So I hope while I'm speaking here maybe you guys will put your heads together and agree to do that so that anybody here who has testified and wants to speak some more can do it. We can stay up, and so can you stay up.

Now, I want to, very quickly, run through some things. I agree with Mr. O'Neill about the insufficiency of the reclamation on the Hill. It needs to be looked at very seriously.

I agree completely with Barbara Miller about the lead action levels. We should not be the worst

place in the nation for lead, in terms of the levels that
we're willing to accept. Our action level is going to be
a lot worse than Anaconda's, for God's sake.

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I agree with Fritz about the responsibility of ARCO for the creek from Casey Street to Texas.

Because, remember, just what Sister pointed out, they modified it. You know, you own it after you modify it.

And, by the way, you almost own it now anyway. But you own it, and so you own it to be made better.

And technical reasons notwithstanding about technical Superfund stuff, I agree with Fritz that it's a responsibility of ARCO to deal with that area. And I agree with Judge Newman completely on that issue, that that is a creek and the whole creek is part of this problem area. And if we can dance around this thing and say, "Well, this is -- this is the BPSOU, and that was part of the other group and that was part of this group, and we've already had a settlement on this and that, and we settled something with the City, and so on." It isn't good enough. Those excuses are not good enough to not have us have a proper solution, as Sister has talked about.

To reemphasize, the City land along the Civic Center needs to be modified. These are the drawings that you're advancing to the public. They show

a dead end of land, green land, green identified land for a creek from Texas Avenue just to where it ends behind the Civic Center. It doesn't go to Harrison Avenue. It needs to get fixed.

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ARCO land. Great job by ARCO in opening up that corridor for us down in through the Northside Tailings and Diggings East. That little bit of land that you own, ARCO, that ARCO owns, immediately to the east of that little Baker peninsula of private land, should be designated as part of that corridor. In the event that we can acquire that Baker land in the future, we can be able to have that area as part of the flowing area of the creek in the future, if we so desire.

I want to put on the record that we will greatly enhance the ability of all the parties to do this thing right with maximum flexibility if, from Kaw Street to Utah Street, that George Street, both permutations of it, are removed and create a bigger open area in there for the ponds and for everything else.

I've got a few more things to talk about that are, I think, important. And I hope that you guys will decide that if you can stay up a little later to let folks here supplement their comments if we've gone through the first list.

Thank you.

MARY LOU SPATH: My name is Mary Lou Spath, spelled S-P-A-T-H.

If I understand correctly what was presented about the water quality standards, and I don't understand water quality standards, but if I understood what you said, the data proves that the quality standards cannot be met so you are asking for a waiver of the standards.

Why should we settle for lowering the water quality standards that are already in place? And, if the waiver is not granted, how will you proceed?

Thank you.

2.4

DOUG COE: My name's Doug Coe, and it's C-O-E. I'm a resident of Butte, and my children and grandchildren live in Butte.

And I want to touch on a couple of things that others have already touched on. Fritz, for example, pointed out, I think correctly, that the true stakeholders in this process are the citizens of Butte. We're the ones that are going to have to live here, or live here now are going to live here in the future. We are the ones that are going to have to worry about whether the health of the community is what it ought to be. We're the ones that are going to have to worry about whether the economic aspects of this are going to play

out favorably for the community. We don't want -- we want to get rid of being labeled a Superfund site. We want to be viewed as a place where people want to come and live.

But I have a problem with process. And in most of my comments, and this goes way back, thirty or so years since we've started down this road, and what a long, strange road it's turned out to be and continues to be. Starting with the fact that the principal parties involved got a judge's decision that they didn't need to share what was going on and the discussions with the public. I find that insulting to the public, frankly.

You can see there's a lot of concerned citizens here that are fairly well informed. They should really have known what was going on. Now, one could argue that that was Butte-Silver Bow's job to do that, but -- frankly, because they were one of the principal parties. But they didn't particularly do a good job of informing the public of what was going on. And that should -- that should never have happened. So that's one flaw from the start. I don't know that that necessarily speaks to the ROD strongly right now.

But thirty years is a long time, and we haven't had many chances to stand up and comment on what's going on. One, we didn't know what was going on.

And now that we do have a better idea of what's going on, we have two meetings on the ROD, and we have a short informal question and answer. And I know there were some people in the audience who looked like they were ready to ask a question informally and didn't get that chance. We moved in a short period of time, before seven o'clock.

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This meeting started at six. About half of it was taken up by Nikia's comments. So there was maybe less than a half an hour for informal discussion. That's another flaw in the process. And now we're into the formal comment, and we're limited to five minutes.

Thirty years, thirty years of pent up concern about this community and really no time to talk about it. Now, we can either go longer or we can have multiple sessions.

There are ways around this. But I find it doesn't give me much confidence in the process when it plays out along those lines.

And one other thing I will mention is, as I look over here at the table and I'd be willing to bet that everybody sitting at that table, and you back there, don't live in Butte. Now, I might be wrong about that. I'm not positive. You live in Helena. Thank God. This is a Butte problem, and we should have had Butte people. Okay. The EPA should have moved them down here. I think people would be a lot more concerned about what's going

1 on here if they lived here, if their children lived here.

I mean, like I said, it's comments on process, I think the process is extremely flawed. I hope that never happens. God, I hope it doesn't happen to this community again. I hope it doesn't happen to any community. And I think there's some lessons to be learned on how to do this.

Thanks.

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JANET LINDH: My name is Janet Lindh, L-I-N-D-H. And I wanted to bring up a couple points.

One is that our Butte-Silver Bow government is compiling its new growth policy. It occurs about every ten years. There was a survey taken by about 500 people, and the top value, resoundingly, and I'm quoting, in the summer the top value was people valued clean water and air for living in Butte. And I think we have to realize that when we look at whatever's being proposed to resolve a lot of these issues.

The other thing I want to bring up is many of the meetings I've been to I've heard the words "hope anticipate, expect." I don't hear "We're going to guarantee that this is going to take care of these problems." So, with that in mind, I want to know what Plan B is. If the guarantee doesn't happen, how are we going to know that solutions will be resolved and

1 corrected so that it comes out in our advantage?
2 Thank you.

2.4

MAUREEN DRISCOLL: My name is Maureen Driscoll, M-A-U-R-E-E-N, D-R-I-S-C-O-L-L. And I just have a short question.

I taught high school chemistry for years and years, and the chemistry of this is kind of bothering me. And it says in this statement here, facts about the EPA's proposed waiver for certain State water quality standards -- I'll just read a sentence here and then ask if there could be some further clarifications.

It says even though, generally, the differences in the degree of protectiveness between the federal dissolved and the State total recoverable standards are small, that the water quality sample, based on the unfiltered, total recoverable measurement allows the State more control over sediment runoff in the waters of the State.

My question is how small are these differences? I've been sitting here probably using up my whole family's data package searching the EPA website for some numbers, for some actual numbers. And you were asked a while ago and you threw out the number 30. Thirty what? Parts per million? And how does the State standard compare to the federal standard?

I guess if we had some numbers, you know, how big of a leap are we taking here, you know, if we were to consent to this -- this adjustment. You know, is it a little different, like it says here, or is there a really big difference?

And I know you can't compare dissolved versus particulates. It's like comparing apples and oranges. But we're not getting any numbers. And your slide doesn't show that. The last meeting we had in April you had a slide that, as an educator, I have to tell you you need to make your Power Point stuff a little bit bigger so people can see it. Because if I can't read the X and Y axis on your graphs, I don't have a lot of confidence in what you're trying to get across. So I'd like to see some numbers. That's all I'm saying.

Thank you.

2.4

Pfarr Hayden, H-A-Y-D-E-N. I have an unconventional concern. I'm an herbalist and a food therapist. And that is what I can do in a very small way to take responsibility for my own health living in Butte and my own soil living in Butte. That there might be some research done, made available to the Butte public on plants that we can grow that might be able to be discarded because they're able to uptake and catch heavy

metals and clean my own soil. And these might be -- in

Anaconda, at the Farmer's Market, I think there was a

flyer up that said, "Please, anybody growing vegetables

in Anaconda bring them in for heavy metals testing." Any

gardener in Butte can have their food tested to see if,

in fact, it's uptaking heavy metals.

Also, make available to the public any research done on foods that can help eliminate heavy metals from the body. I have a protocol from an herbalist is Hot Springs, Montana, simple foods, cilantro for Mercury, chelators that help eliminate heavy metals from the body. Foods that can be grown here. Apples, onions, garlic, broccoli, kale, collards, brussel sprouts. These things can be done on an individual basis so that citizens can actually take responsibility for the effects of living here. Please consider these things that we can do for ourselves.

THE FACILITATOR: If there's no other comments, I will invite others who got cut off, like Evan or Fritz, if you want to continue your comments, you're welcome to do so.

FRITZ DAILY: Yeah. I want to just share just a couple, just, I know people get tired and are ready to go home. I understand that, as well. But just for clarification, so people know what.

I submitted written comments to the EPA, and I wrote a letter that took me a long time to write. It took me a few days to write it. And I had some serious concerns, as you all know from listening to me tonight. I have some serious concerns about what's going on. And I'm concerned for my community. But what happened in the process is that I received a tan letter back from the EPA to my letter that was a one-page summary that just said, "Thank you very much."

2.4

It does not address one single comment that I made or one single question that I addressed, not one. Not one did you guys address, not one. And you gave a copy of an editorial that Doug Benevento had done way back when. And that was your cursory response to my comments.

And just so the people know here, I've been involved in this for a long, long time. And sometimes I say I know too much and I wish I didn't. I wish I didn't know too much about the EPA. I wish I didn't know as much about you guys as I do. But here's what happens with your comments. Here's what happens with your comments that were made tonight. Here's what happens to your comments that you submit in writing. Here's what happens to them. I've been down the road. I've played the game.

Here's what happens. Those comments go to the EPA, to these folks up here tonight, not to our community that's responsive. They go to the EPA. And what the EPA does is they submit those comments to the judge. That's what they do. The judge doesn't hear what he needs to hear. I have written Judge Haddon a letter after some legal disputes that we're involved in. And, basically, what Judge Haddon did to me is he sent me back a letter saying, "Don't write to me. Don't write to me. I don't want to know what Fritz Daily has to say. I don't care what he has to say." That's basically what he said.

But I can tell you something hear tonight that, to me, was really, really important. And it was Judge Newman. Judge Newman is a quality guy, a quality guy, who lives in this community. And what he said tonight made more sense than all of us combined made. Judge Newman told you what I said, but this came from Judge Newman. It doesn't come from Fritz Daily. It came from Judge Newman. Judge Newman told the State of Montana whether you like it or whether you don't like it that Silver Bow Creek is a creek. It's a creek. As I said in my comments, it's not a sewer, it's not a storm drain, it's not a water feature, it's a creek. That's what it is. That's what Judge Newman just told you.

And in my comments I was going to tell you 1 the same thing Judge Newman did. The State of Montana 2 3 had the opportunity to go to the Supreme Court or go wherever and appeal Judge Newman's decision. But, you 4 5 know what, they didn't do that. And you know why they 6 didn't do that? Because they were afraid to. That's why 7 they didn't go to -- that's why they didn't do that. 8 And, you know, I get frustrated. You can 9 And I get angry. Damn rights I get angry. see that. 10 And I'm angry with you guys. I'm angry with you guys 11 because of my community. I love this community. I've lived here all my life. This is a great community. 12 13 you guys are doing is wrong. It is wrong. But you could do what's right. You could do what's right. Do you have 14 15 the power, do you have the power to make sure that we have a creek running through this community? Damn rights 16 17 you do. Damn rights you do. If you want to do it, if 18 you want to do it, you have that power, you have that 19 authority. 20 Sure, there's laws. I understand all that. 21 I've served several sessions in the legislature. But the 22 EPA has a responsibility to make sure that when you pass 23 judgment on what's up here that you do that in a way that 24 protects human health, but it also protects the 25 environment. That's what it does. It protects the

environment, too. And Judge Newman listened. He
listened. He listened to my good friend Jim Goetz and
Sister Mary Jo's good friend, Jim Goetz, our attorney.
And he listened to us and he listened to them, and he
made the right decision.

And you guys still can do that. You can still make the right decision. But, you know what? You're not going to. You're not going to. I don't know why. I don't know why the Butte-Silver Bow local government -- I don't get this. I don't know why the Butte-Silver Bow local government, the EPA, the State of Montana, I don't know why you guys don't say to ARCO BP, "Do what you're supposed to do. You closed the smelter that started this whole mess." I've been at this a long time. I mean, when they closed the smelter, there were 65- to 70,000 people who lived in this community. Now there's 34,000, and we're struggling to keep that.

So, yeah, you know, it's not easy to come up here and talk in front of a big audience like this. You know, like I've told you before, I mean, many times I feel like a CNN reporter at a Trump rally in front of you guys. I'm not very welcome, you know. But, anyway, I think you heard the concerns from a lot of people here tonight.

And let me just say one more thing. This

is the last straw for Butte, Montana. Someone mentioned 1 2 that there's nine other sites. All of those sites are 3 settled. This is it. This is it, Butte Priority Soils. 4 This is it. And we're going to be stuck with forever 5 with what they're giving us. Come on, guys. You know, 6 do your job. Do what's right. Do what's right for our 7 people. Do what's right for our children. Do what's right for our children. That's what you need to do. 8 9 EVAN BARRETT: Thank you. My name's Evan 10 Barrett, and I'm going to give some supplemental 11 testimony. And I'll be complimentary now on your time. 12 Thank you for giving us this extension. It was the right 13 thing to do. 14 I'd like to say that as a citizen -- and, 15 by the way, I've been involved in this stuff since the 16 get-go. I came to work here with Senator Melcher in 17 1979. I was here working for the U.S. senate when 18 Superfund designation, Superfund law was passed, when 19 Superfund designation took place. I've been involved 20 continually as a governmental employee, as an economic 21 development person in Butte, through this whole thing. 22 And we are at the tail end of things right 23 now, and it is pretty scary that after -- that we're 2.4 going to get locked into something and find that it is 25 inadequate. We're not happy about how long it's taken,

but I fear that we're being pushed against deadlines now that might make us accept decisions that maybe need a little bit more time. None of us liked 12 years of silence behind the shroud of a confidentiality order of a judge. None of us liked that. But now --

And, by the way, part of the compliments, compliments to the EPA for pushing this thing out into the open, for pushing the CD participants with the threat of moving on a UAO so that they had to get to the table and do something. Compliments to the EPA for doing that. You broke the log jam. Now things are moving. And maybe, maybe, a little too fast, I think, August 15 CD, comment period.

And I appreciate Doug Benevento saying we're going to get this done by a given date, because that has forced action. But it's pretty scary because some of these things we're looking at right now we're acquiescing to or being asked to acquiesce to. I don't think it's quite been played out adequately yet. So but thank you to the EPA for driving this process forward.

Thank you to the parties for agreeing, and particularly to ARCO for agreeing, to remove the tailings in the Northside Tailings and the Diggings East. If you had followed this all along, you know that decision was made a long time ago that EPA had agreed. The State

disagreed. Some of us disagreed. But the EPA and ARCO had come to an agreement that human health and safety did not require the removal of those tailings.

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So when Restore Our Creek was formed, remember what their mission -- what our mission statement was. And I wasn't there at the beginning. I joined them after the fact. Remove the tailings, restore the creek. And then maybe some amenities to go with it. Okay. Remove the tailings, restore the creek. The tailings are substantially being removed. Thank you for that. Not deep enough. We ought to be looking at that. Not deep enough, but wide enough. All of you should be looking at how deep are they going.

We've looked -- we have seen what happened when they had the digging in the Parrot Tailings. And remember all the assurances of the Parrot Tailings.

Well, you know, those aren't all that bad so we really don't have to dig them out either. We didn't have to dig the tailings out because the agreement was made between the local government and ARCO and EPA that we didn't have to dig the tailings out of the Parrot Tailings. The governor took the bull by the horns and made it happen.

And, by the way, a waste of precious money. He has had to use limited restoration money that could help restore the Butte Hill. He's had to use that to

take out the Parrot Tailings instead of it being done under remedy. But now that we dig into it, we find it was much worse than everyone thought.

So what are we going to find out when we start digging out the Diggings East or the Northside

Tailings. Well, we're not going to really know how bad it is because they're only going to go down so far, to the top of the high groundwater level. Okay. I don't particularly like that. But thank you for taking them out at all because it opens up some opportunity in that area that wouldn't otherwise be there.

Now, I'd like to take a second, and I just talked about George Street, and just to reiterate, that one of the principal parties in this thing is the city, Butte-Silver Bow local government. And so inside the closed negotiations, I guess it's just simply their choice to say we're not going to remove this. This was brought up all last year by citizens of Butte.

And, by the way, it would have enhanced the ability to really do something nice in that corridor if we didn't have the original street and then the curved variation on George Street there. Because, right now, ARCO's and the -- what they're trying to do with the settlement ponds is they're constrained to put some on this side of the road and some on this side of the road.

Right? Get rid of that road. It should be done.

And we should find that's again, with time, take the time -- someone's going to say, "Well, it takes a long time to close a street." Okay. Then take the time. Take the time. You know, I made a statement the other day that public process should not be an excuse for inaction. "Well, we can't do it because we don't have time because of the public process." If we did that, we wouldn't have REC out here. Right? Did we say, "Oh, we've got a lot of public process for you, I don't know if we can handle you with your 400 employees and your \$550 million plant"? No. We said, "Come on in and we'll do it. We'll fix it." So we need to have the vision of what this corridor ought to be. And we can handle the public process if we're allowed the time.

Now, Nikia, and thank you for all your work here, mentioned at the beginning of this thing that you did a TI model, and the idea of the TI model was to answer the question, "Can this be done?" Good reason to do that. Well, there's another "can this be done" hanging out for this community right now, which is the assertions by the EPA and all the parties for a year and a half that a creek can flow from Texas Avenue to Blacktail Creek without -- and it can happen notwithstanding what's happening in terms of the remedy.

"Well, we love those assertions, but we don't really know it can be done." Can it be done? So we said, "Why don't we have a modest amount of money, we've been told about 50 grand, in the millions and tens of hundreds of millions being spent on this stuff, to commission a conceptual engineering design and feasibility on a creek in that corridor to determine can it be done, just like the TI was about can it be done?"

And we're still waiting for someone to say yes to that, instead of telling us all the reasons it cannot be done, some of which are the public process of the local government and some which are the local process of this or that. That's baloney. That stuff should not hold up making the right decisions on the front end, having the vision to do what is right and then overcoming the obstacles. You know, zoning not a -- if it's something the community wants, then zoning's not a problem because the community will -- within the zoning laws we will make it happen. So let's stop.

I worry that now we're rushing. Thank God we got it started and thank God we've gotten to where we have. Good for you on all that stuff. But we need, for example, the resources dedicated to its conceptual engineering design and feasibility study. We need, I

think, to take a serious look, given what the reminders we have from Judge Newman and from Fritz and from the reality from Sister Mary Jo, who made the point quite well, that between Texas Avenue and Montana Street our creek was changed by ARCO. Do we have the right because of that to ask that maybe it be changed back to something a little better than what we're being told right now? I think so.

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Again, thank you all, to all the parties, for what you've done. And you have moved the ball forward. Let's make sure we don't make mistakes as we move to the final line on this thing.

DAN O'NEILL: My finish-up comments are about exactly what's happening here. Everyone's up and leaving.

And it leaves me the last few paragraphs I had to read, which was, first, anything less than a complete cleanup is, frankly, a mere avoidance of responsibility and perpetuation of the problem into the future, until a new group of leaders, legislators, judges and government officials can step forward to do what should have been done 30 years ago, start cleanup at the origin of the problem. This might require more work, more face-to-face contact with individual personal property owners, but I bet that a proper plan will be

widely accepted.

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Now, one thing that's come up that I don't know if anyone here is fully aware of, but there was -it hasn't even been decided as far as I'm aware, but the historic designation process was under public comment period -- is Dan still here? He may have to help -- a month ago. So I just, by chance, found this. And some of the things that they're looking at changing in the historic designation process was the individual rights of individual property owners versus corporate or government interests. Under the Trump Administration they want to change it so that a corporation or another government agency could, under wide broadcast, make major modifications to historic district homes, including complete destruction or demolition. That would, I think, apply to Butte. Some of the other things were that it would override state and federal agencies' decisions, including Indian Affairs.

So how that might relate to this cleanup, again, is if what's been holding this cleanup back is the fact that we have this historic designation of the whole area, which, again, talking between two government agencies, one government agency can designate this the largest historic district in the west and another government agency can come in and say, "Well no, we're

just going to clean here, and we're just going to clean here, and we're just going to clean over here," instead of just cleaning the whole damn thing up. So maybe that would affect Butte. So I think that should be looked into, where that is going or what the -- the comment period closed, and I don't know if there's been a decision made. But it would definitely, from what I read, affect the Butte area.

Now, just a few -- few more things. And that's me personally living here, I've had a business here for 20 years. It's been a struggle and a fight.

And, I mean, quite frankly, I mean, probably by the end of this year or the end of the summer I'm not going to be here. And it's just because, one, I went away and came back, and it was truly difficult to find a partner that would actually want to come back to Butte, Montana.

I mean, it's just my age group. You saw it here. I mean, probably less than 10 percent or 5 percent of the people in here tonight were under 35 or 40 years old. You know, everyone here's older. And probably one of that is that the intelligent people that are making money left or the kids that are my age have kids and are worried about them at home and probably don't have time to be concerned with these type of meetings. Because my business is related to cleanup, not directly in the large

sense, but landscaping, it does affect me a little bit more than probably most people my age.

So, just to close, like I said at the last meeting, I think it was the problem with the engineers doing a crappy and lazy job and that created the technical impracticability. And, by that, I mean, they went the easy route. They went, "What's going to be the easiest thing to clean up?" You know, all the areas where no one's living around. The creek beds and the stream beds and the area behind the dam, they didn't interrupt anybody.

The areas where there's problems and there are going to continue to be a problem for 100 years -- I mean, they set up this RMAP money for, like, 99 years originally. It might be down to, like, 91 or 90 years. I mean, these areas need to be cleaned up. These houses aren't even going to last 90 years. You might as well just give the whole city to Washington and let him tear down the whole Uptown Butte, because that's probably just as good as what they're doing, which is nothing.

And to reiterate on the park and the playground, like I said, I think it's technically a practical joke and a deceptive ploy to engage the community in a long-term plan. Again, for a project that has an established boundary and an area that will have

little to no impact on any home or business or building or real estate. And the real issues and the real problem areas, again, by this map, are areas that are surrounded by real estate, dwellings, homes, buildings. You know, most of which would probably benefit from, rather than an attic cleanup or a yard cleanup --

You know, I look at the bids for some of these things. You know, this is no joke. I mean, I follow the bid package, and there will be \$17,000 to clean up a yard. And I look at the house, and I'm, like, I wouldn't pay 25,000 for the house and they're giving \$17,000 to clean up the dirt. I mean, where is the intelligence and the business savvy and economic sense? It doesn't make any sense.

So I think it might be worthy of ARCO to look at it from -- again, it's not their responsibility. I'm aware of that. But maybe they will consider, as part of this process, stepping in and acting as a redeveloper or a developer into an area. You know it can be done. The Anaconda Company did it 50, 60, 70 years ago. They bought everybody out and they turned it into the pit. You know, we can buy everybody out and turn it into a great place to live.

UNIDENTIFIED SPEAKER: I just have one brief comment on the process that I wasn't able to get to

earlier in my comments, and that's pretty straightforward.

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that, are spelled out under federal rulemaking. But what's not spelled out and what's not a requirement is the signed consent decree by mid August. And I think if you just look at the process, where the end of the comment period will be June 11, to go from realistically incorporating what you're hearing tonight and what you've heard over the last few months, including very important legal distinctions that the State of Montana needs to consider, to go from all that in the course of two months doesn't give me a lot of faith that we're going to be heard.

And the comments I wanted to make and what would be wise of you all to consider is that sometimes when you're locked into a room for years and years and years -- and I know this. I have bargained with some of the biggest corporations on earth on behalf of labor.

And I know two things. One is those that set the timelines set and control negotiations. And so if you set a hard timeline of August 10 or August 15 that we're going to have this signed you're driving a false timeline on those negotiations. So that's the first thing I know.

And the second thing I know is that when we

hit a deadlock in bargaining sometimes the best thing you can do is for everybody in that room to get out of that room and go out and listen to the people that it's going to affect the most. In my case, that's union employees that are going to live with the consequences. And, in this case, it's everybody that's in this room.

And I think you have an opportunity because of that to incorporate all this comment. If you take a little bit more time to realistically incorporate what you're hearing tonight into this process, take a little bit more time and treat it kind of the same way that President Obama treated the intelligence that he had when they first got word that Osama bin Laden might be living in Abbottabad over in Pakistan.

And I know it sounds like I'm way off the rails. But what he did, knowing that he had a major decision to make and one that could go either way and would have major political implications, is he kept some of the best and brightest people out of those intelligent conversations from the get-to. And, unknowingly, that's exactly what you've done by having a closed consent decree negotiations, is you kept all the people in this room that know about them -- we've heard a lot about them here tonight, a lot from them. You kept all those folks out of the process. And you did get good work. You

moved it forward. You got it this close. Listen to these people, just like he did.

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And all those people that he kept out of the room he brought back in after that team had their plan. And they were about 90 percent sure that he was living in that compound. He brought that team back in and he called them a Red Team. And the Red Team's job was to shoot holes in everything that the folks in that room had come up with. And the result was a much more realistic approach to the intelligence, and it informed how we went about the operation. Instead of launching a missile in there, we did a much more precision tactical mission.

And the reason I use that example is that's what you have out here tonight. You have folks like

Fritz Daily and Evan Barrett and Northey Tretheway and

Judge Newman that have literally spent their lives and know this. But you're not going to incorporate all that knowledge within two months. It's just not going to happen.

So, for the EPA in the room, buck your administrator. Tell him, "We appreciate the deadline. Give us a little more time. We're this close." And I really believe we are this close. But if you're going to truly incorporate what you've heard it's going to take

longer than two months.

Thanks.

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THE FACILITATOR: Okay. Just a quick announcement. We have to be out of the room at nine o'clock. So that's ten minutes, or less, because we've got to clean up, too.

MIKE PAFFHAUSEN: Okay. All right. So I'm going to speak more to the economic development side that you can unanimously see in the community as a concern. But I believe that the finalization of the ROD amendment and Consent Decree are critical parts of the process of delisting us from the Superfund and DL site. Delisting is important to the economic outlook of Butte. If you ask anyone outside of Butte why they won't move to Butte, it has to do with the synonym of Butte and the Superfund site. And I've heard a lot of comments about we've drug this out but then we're asking you to drag it out. And that doesn't make a ton of sense to me. So I'm not sure which stand -- which foot we're standing on as a community, to get it done or to drag it out.

But let's see. So, like I said, delisting is important. We should be pressing towards building a local economy that can sustain the inevitable closure of the Montana Resources current mining operations. The reality is we will always be The Mining City but we will

not be a mining city within the next three decades due to ore reserves. Removing the synonym of Butte and Superfund is a critical part of a good economic strategy for Butte to grow and to sustain. And, I assure you, all of our economic developers agree with me. They won't speak, though. They can't.

I want to thank DEQ, EPA, ARCO BP, their contractors and consultants who have gotten us this far. I know it goes thanklessly sometimes. And you sit in cubes and think for hours and try to figure things out. But your work is appreciated. We thank you for getting Butte where we are today, which is copper concentration is 100 times less than pre-CERCLA, which I can't factually say we have not had progress in Butte.

And, lastly, in the spirit of proper negotiations etiquette, that our community and our coalitions offer concession in the negotiation. I don't see that we've moved very much. And I see a lot of offers and offers and offers and, really, no movement on our part. I think we should accept the plan as offered with the comments that were all submitted tonight, and proper address to everything that was submitted, and make sure that we move forward as a community.

I do believe, if I'm not mistaken, that there was money that is being set aside in an interest

bearing account for the future feasibility study of the creek corridor and construction.

Is that correct?

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Okay. So that should -- that should be very much on the record. When the water source becomes available during the subsidence of all of the mining operations, and Silver Lake is open and you can get to the Yankee Doodle and to the other headwaters, when those are not under ownership of water right, the money's going to be in an interest bearing account for those feasibility studies to be done and for the construction of the site.

And I agree with some people we might want to know now, but there is some barriers that make it questionable if that's a good use of the taxpayer's dollars when there's no water to put in the creek. And that's just factual. You can't put groundwater in it. That doesn't work. The groundwater's contaminated. There's a reason the storm drain's there.

So thank you guys. And, endly, I want to really legitimately thank ROCC, the Clark Fork Coalition. None of this where we are at, none of these amenities, would exist without your work. And so I'm not here to argue with you. I'm here to compliment you and to say that at some point in the future I think a concession is

1 | necessary, and I think it should be necessary now.

2 | SISTER MARY JO McDONALD: I'm Mary Jo

3 | McDonald.

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My comment has to do with how many out here know that Butte, Montana, has to build a new treatment facility for the nutrient problems that we have. How many knew that? To the tune of \$30 million. How many have noticed it on your tax bill, another \$180 a year for that new treatment facility? No waivers. No waivers for Butte.

I agree there might need to be waivers, but let's not put the cart before the horse. Let's get some of the cleanup done and see what the results are of that cleanup that's being done to know whether we really do need to change from Montana standards to federal standards. Montana has stringent water standards because they want to preserve good water in our state. And so I don't think we lightly say, "Oh, sure, no problem. And if the first level isn't okay, come back and we'll give you another level." I don't think so. I think we need to question some of those things and to say, "Do you really need it before the cleanup is started?"

And, please, start the cleanup tomorrow.

THE FACILITATOR: Well, if there's no more

comments, and we're pushing towards nine o'clock, I want

1	REPORTER'S CERTIFICATE
2	STATE OF MONTANA)
3) ss. County of Silver Bow)
4	
5	I, KIMBERLY CARPENTER, an Official Court
6	Reporter and Notary Public in and for the State of
7	Montana, do hereby certify:
8	
9	That said comments were taken down by me in
LO	shorthand at the time and place therein named and
L1	thereafter reduced to typewriting under my direction and
L2	control.
L3	
L 4	I further certify that the foregoing,
L5	consisting of Pages 1 through 80, contains a full, true,
L 6	and correct transcript of the comments had, transcribed
L7	by me to the best of my knowledge and ability.
L 8	
L 9	
20	DATED this the 19th Day of June 2019.
21	
22	
23	(Signature) /s/Kimberly C. Carpenter Kimberly C. Carpenter
24	Notary Public for the State (Seal) of Montana, residing at
25	Butte. My commission expires: July 17, 2022.
	CAPILOS. OULY 17, 2022.